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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,200	08/01/2001	Paul Ralph Bunke	8654	5739

27752 7590 02/02/2004

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EXAMINER

WEIER, ANTHONY J

ART UNIT PAPER NUMBER

1761

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/920,200

Applicant(s)

BUNKE ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-11 in the paper filed 11/3/03 is acknowledged. The traversal is on the ground(s) that the examiner has not described a process wherein the product may be made by a different process. It should be noted that it is now realized that the two groups of claims pertain to a product and the method of using same. That said, the inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the ground coffee and used grounds product may be used in preparing another food product, for example, using same in a dessert topping (e.g. with chocolate) or as an ingredient added in specialty candies.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rizzi et al (U.S. Patent No. 5328709).

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Rizzi et al discloses a composition for preparing brewed coffee comprising ground, roasted coffee and processed coffee grounds wherein of said coffee grounds includes 20 mesh U.S. Standard Sieve Series and wherein said ground, roasted coffee and coffee grounds are present in a ratio of, for example, 10:1 (see all of col. 7). In addition, Rizzi et al discloses using robusta or Arabicas beans (col. 8, lines 1-11), including soluble coffee particles (e.g. Example 1; 1% soluble coffee solids), and wherein said composition has a moisture content which is inherently less than 10% (e.g. col. 7, lines 23-26; "Drying...removes substantially all remaining solvent and water."

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Canada 1032825.

Canada 1032825 discloses a composition for preparing a brewed coffee beverage wherein said composition comprises roasted, ground coffee and processed coffee grounds and wherein said processed coffee grounds would inherently possess the lipids required to meet the limitations called for in instant claims 2-4 because there is no defatting step employed for said coffee grounds.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rizzi et al (as discussed above).

The claims further call for the ground coffee and coffee grounds to have a ratio of about 65:1 to about 133:1. Although Rizzi et al suggests the use of a ratio which is lower than this range, it is not see wherein the use of such a higher ratio would provide for a patentable distinction. Clearly, the determination of said ratio would be well within the purview of one having ordinary skill, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived within said claimed ratio range as a matter of preference depending on the particular taste desired or as a matter of cost or availability of the two ingredients.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rizzi et al (as set forth in paragraph 2) taken together with either one of Napier or Heusinkveld.

Rizzi et al further discloses packaging the coffee composition (col. 9, lines 1-5). Rizzi et al is silent, however, regarding packaging of same in a water permeable pouch. However, it is notoriously well known to package coffee compositions (to be used for brewing) in water permeable pouches. For example, either one of Napier or Heusinkveld teach same. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included said coffee of Rizzi et al in a water-permeable pouch as a notoriously well known art recognized packaging alternative.

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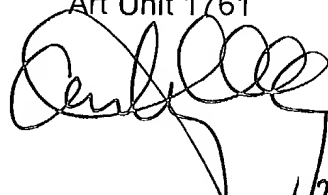
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 703-308-3846. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-0987.

Anthony Weier  
January 23, 2004

Anthony Weier  
Primary Examiner  
Art Unit 1761



1/23/04